

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 98-0411
RESPONSIBLE OFFICER
SALES TAX AND WITHHOLDING TAX
For Tax Periods: February, 1984-1988

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ISSUES

1. Responsible Officer Liability – Duty to Remit Sales and Withholding Taxes

Authority: IC 6-2.5-9-3, IC 6-3-4-8 (f), 11 USCA Sec. 704.

Taxpayer disputes the determination that she has the duty to remit the corporation's sales and withholding taxes.

2. Sales and Use Tax-Statute of Limitations

Authority: IC 6-2.5-9-3, IC 26-1-3.1-118, Ball vs. Indiana Department of Revenue, 563 NE2d 522 (Ind. 1990).

Taxpayer contends that the assessment is barred by the Statute of Limitations.

Statement of Facts

The Indiana Department of Revenue timely assessed the corporation liabilities for withholding taxes and sales taxes unpaid to the state for the tax period 1984-1988. The corporation did not remit these taxes and the Indiana Department of Revenue assessed the liabilities against Taxpayer as a responsible officer of the corporation. Taxpayer protested this assessment. More facts will be provided as necessary.

1. Responsible Officer Liability – Duty to Remit Sales and Withholding Taxes

Discussion

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 which provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against Taxpayer pursuant to IC 6-3-4-8 (f), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

The corporation was converted from a Chapter 11 to a Chapter 7 bankruptcy on December 30, 1988. As President of the corporation, Taxpayer signed corporate checks and tax returns. She agrees that she was the person responsible for remission of the taxes to Indiana prior to the conversion date. She contends, however, that the Chapter 7 Trustee was responsible for the remission of the taxes that should have been filed after the conversion date. Pursuant to 11 USCA Sec. 704, the Chapter 7 Trustee had the responsibility for filing all tax returns and remitting taxes to Indiana.

Finding

Taxpayer’s protest is sustained for all liabilities incurred after December 30, 1988. Taxpayer is responsible for all liabilities incurred prior to December 30, 1988.

2. Responsible Officer Liability – Statute of Limitations

Discussion

Taxpayer does not contest that she was an officer with the duty to remit the sales taxes to the state prior to December 30, 1988. Rather, Taxpayer contends the statute of limitations bars the Department’s efforts to collect on the tax assessments and on dishonored checks. IC 6-8.1-5-2 sets the statute of limitations for tax assessments at “three (3) years after the latest of the date the return is filed, or . . . the due date of the return.” IC 26-1-3.1-118 sets the statute of limitations for actions to enforce an obligation with respect to a dishonored draft as three (3) years after the dishonor of the draft.

Notices of proposed assessment including liabilities resulting from the dishonored drafts were sent to the corporation within three years of the dishonor of the drafts. The Department argues that Taxpayer is deemed to have had knowledge of those notices of proposed assessments since he was a responsible officer of the corporation. Ball vs. Indiana Department of Revenue 563 NE2d 522 (Ind. 1990) considers this issue and concludes that the Department's interpretation of the statute is correct in that an attempt to collect by sending a notice of proposed assessment to the corporation is an attempt to collect from the responsible officer. The original effort to collect was within the three year limit. Therefore the assessment is not barred by the statute of limitations.

Finding

Taxpayer's second point of protest is denied.